INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
C.W.P. No. 7790 of 1992
Date of decision December 5, 2007

Smt. Surinder Kaur wd/o Sh. Labh Singh, c/o Atma Singh, Pb. And Sind Bank, Talwandi Sabo Distt. Bathinda (impleaded as the legal representative of Labh Singh, deceased vide order dated 27.11.1996, passed in C.M. No. 21625 of 1996).

..... Petitioner

Versus

1. **State of Punjab through Director General of Police, Chandigarh.**
2. **Deputy Inspector General of Police, Ludhiana Range, Ludhiana.**
3. **Senior Superintendent of Police, Ludhiana.**

..... Respondents

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. Kamaldeep Singh, Advocate
for the petitioner.

Mr. Mukesh Kaushik, DAG., Punjab
for the respondents.

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Sham Sunder, J.

Labh Singh, Ex Head Constable, who filed the instant petition, died during the pendency thereof and his widow Smt. Surinder Kaur, being his legal representative, was brought on record.

2. Labh Singh (now deceased) joined as Constable in the Police force on 25.8.1977, at Sangrur. He was later on transferred to Ludhiana. He passed the Lower School Course in 1983. His name was brought on list 'C'. He was promoted, as Head Constable on 19.6.1986, and he continued to be so, upto the date of termination of his services. He was falsely implicated, in a case, bearing FIR No. 84 dated 31.3.1990, under Sections 304/506/201/34 I.P.C. P.S. Sadar, Ludhiana. He was tried by the

Court of an Additional Sessions Judge, Ludhiana, and was acquitted vide judgment dated 4.1.1991(Annexure P-4). After the registration of the aforesaid case, an order dated 3.4.1990 was passed, dismissing him from service, for his alleged misconduct relating to some other incident, by resorting to the provisions of Article 311 (2) (b) of the Constitution of India, by respondent No.3. An appeal was preferred against the order of dismissal dated 3.4.1990 (Annexure P-1), but the same was rejected by respondent No.2 vide order dated 28.6.1991 (Annexure P-2), without any rhym or reason. Labh Singh filed a revision petition, before respondent No.1, and the same was dismissed vide order dated 4.12.1991 (Annexure P-3). It was stated that instead of conducting an enquiry, as per the procedure prescribed under the Punjab Police Rules, respondent No.3, adopted a short-cut method, and dismissed Labh Singh from service. It was further stated that there was no material, on record, on the basis whereof, the competent Authority, could come to the conclusion, that it was reasonably impracticable to hold a regular enquiry. Ultimately, Labh Singh (now deceased), filed the instant petition, for issuance of a Writ, in the nature of Certiorari, quashing the orders Annexure P-1 to P-3, being illegal, unconstitutional and violative of the principles of natural justice, and statutory Rules. Prayer for issuance of a Writ of Mandamus, directing the respondents to grant all consequential benefits, including pay etc., by quashing the orders, aforesaid, was also made.

3. In the written statement, filed by the respondents, the factum of enrolment of Labh Singh as Constable, in the Police Department; his passing of Lower School Course; placing his name in list 'C' w.e.f. 1.9.1983, and his promotion as Head Constable w.e.f. 18.9.1986,

was admitted. However, it was stated that the petitioner was discharged from service, on 13.5.1979 A.N., by the Senior Superintendent of Police, as he was found unlikely to prove an efficient Police Officer. He was, however, reinstated in service, in compliance with the order of Inspector General of Police dated 15.4.1980, and was transferred from District Sangrur to District Ludhiana. It was admitted that a criminal case, referred to hereinbefore, was registered against the petitioner. It was denied that it was a false case. It was admitted that he was acquitted in that criminal case, by the Court of an Additional District and Sessions Judge, Ludhiana, vide judgment dated 4.1.1991. It was stated that Labh Singh was dismissed from service, on the basis of the charge, that he was misusing his official position by extorting money, from truck and tempo operators, plying on Ludhiana-Sangrur-Delhi road, which is National Highway, though, he was not supposed to check the same. Thus, he was unnecessarily harassing the public and defaming the name of the Police force. It was further stated that, in these circumstances, it was reasonably impracticable to hold a regular departmental enquiry, as it was very difficult, to find out the whereabouts of the Truck/tempo operators of other States, and, at the same time, even if, any of them, was traced, he was not likely to depose against him due to fear. The factum of dismissal of appeal, as also the revision, filed by him was admitted. It was further stated that the orders Annexure P-1 to P-3 were legal, valid and operative against the rights of the petitioner. The remaining averments, were denied, being wrong.

4. I have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

5. Learned Counsel for the petitioner, at the very outset,

contended that the order dated 3.4.1990 vide which Labh Singh, Ex-Head Constable (now deceased) was dismissed from service, was illegal and liable to be set aside, because there was no valid ground, to dispense with the requirement of holding of regular departmental enquiry, contemplated under Rule 16.24 of the Punjab Police Rules read with Article 311 (2) of the Constitution of India. He further contended that respondent No.3 did not have any material before him, which could justify that it was reasonably impracticable to hold a regular departmental enquiry. He further contended that the observations, recorded by respondent No.3, in the order dated 3.4.1990 (Annexure P-1), that the petitioner during the period from 18.3.1990 to 29.3.1990, was extorting money by misusing his official position, from various truck/tempo operators, plying on Sangrur-Ludhiana-Delhi road National Highway, were without any basis. He further contended that the orders Annexure P-2, passed by the Appellate Authority and Annexure P-3 passed by the Revisional Authority were liable to be quashed because the same are violative of the principles of natural justice. He further contended that the respondents did not consider any of the points raised by the petitioner before them.

6. On the other hand, the Counsel for the respondent contended that the satisfaction recorded by respondent No.3, in his order Annexure P-1, that it was reasonably impracticable to hold a departmental enquiry, against Labh Singh, was based on information, received by him, from various quarters, and should not be said to be without any basis. It was further contended that, it was very difficult to procure the service of the truck/tempo operators, from whom the money was extorted by Labh Singh, by checking their vehicles, which he was not authorized to do, by misusing

his official position. He further contended that respondent No.3, was right, in recording in the order in Annexure P-1 that, in case, the service of such operators was procured then they would not be able to depose, in the departmental enquiry, on account of fear.

7. In order to deal with the contention of the learned Counsel for the parties, it would be appropriate to extract the provisions of Article 311 (2) along with its provisos as under:-

> *"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State:-*
>
> *(1) XX XX XX*
>
> *(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.*
>
> *Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.*
>
> *Provided further that this clause shall not apply.*
>
> *(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge or*
>
> *(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry: or*
>
> *© where the President or the Governor, as the case may be, is satisfied that in the interest of the security of*

the State it is not expedient to hold such enquiry."

8. The plain reading of Article 311 (2) clearly reveals that holding of a regular enquiry, is sine qua non, for imposing the penalty of dismissal, or removal or reduction in rank of a public servant. The requirement of such enquiry, can be dispensed with, in three eventualities, specified in Clauses (a) (b) and (c)of the second proviso to Article 311 (2). Clause (b) lays down that the enquiry contemplated by Article 311 (2), need not be held, where the authority empowered to dismiss or remove a person, or reduce him in rank, is satisfied, that it is not reasonably practicable, to hold such an enquiry. In the light of the above, it would be determined, as to whether, the order dated 3.4.1990, is ultra vires of Article 311 (2) read with Rule 16.24 of the Rules ibid. As stated above, the petitioner was dismissed from service vide order dated 3.4.1990 (Annexure P-1), on the ground, that he being a Constable (under suspension), during the period from 18.3.1990 to 29.3.1990, checked the private vehicles, on National High Way, though, he was not authorized to do so, by misusing his official position, and extorted money from such operators. It was also recorded, in the order, that the service of such operators, could not be procured, as they belong to various States, and, in case, they were served they would not depose against the petitioner, on account of fear. There is nothing, on the record, as to wherefrom such an information, was received, by respondent No.3. The name (s) of the person/persons who divulged this information, to respondent No.3, was/were not mentioned. After such an information, was received, against Labh Singh, by respondent No.3, he could depute some responsible Officers/officials, to keep watch on him, so as to ascertain, as to whether, he was indulging into the aforesaid activities.

Picket could also be held, by respondent No. 3, or his trusted Officers/officials at the sensitive point/points referred to hereinbefore, on the National Highway, and enquiries could be made, from the truck/tempo operators, as to whether, Labh Singh ever checked their vehicles and extorted money from them. The learned Counsel for the respondents was directed from time to time, to produce the original record, on the basis whereof, respondent No.3, was satisfied that it was reasonably impracticable to hold an enquiry against Labh Singh, but he showed his inability, on the ground, that though the directions were issued, to the concerned authorities, to produce the record, yet they failed to do so. This clearly showed that there was no record, whatsoever, with the respondents which could justify the order of dismissal, against Labh Singh by resorting to the provisions of Article 311 (2) (b) of the Constitution of India. The first opportunity, which the petitioner got, was to file an appeal against the order (Annexure P-1). Copy of the appeal is (Annexure P-5). In the said appeal, it was made clear by Labh Singh that there was no material before the Senior Superintendent of Police, to form an opinion that it was reasonably impracticable to hold an enquiry in this case. No material was, produced, before this Court, showing that the petitioner indulged into the aforesaid activities, so as to prima facie support the observations made in Ex. P-1. Not only this, Labh Singh had been in service since 25.8.1977. He was dismissed from service vide order dated 3.4.1990 (Annexure P-1). By that time, he had already rendered 13 years of service. There is nothing, on the record, that earlier complaints were received, against Labh Singh, that he was misusing his official authority and extorting money, from the general public under the guise of that authority. If Labh Singh had been

indulging into such activities earlier, it would not have escaped the notice of the respondents. It was, therefore, a fit case, in which regular departmental enquiry, under the provisions of law, could certainly be held, against Labh Singh, wherein, some of the truck /tempo operators, could be summoned, and examined, and, on the basis of their deposition, it could be decided, as to whether, he was indulging into extortion of money, from them, or from their fellow operators, by checking their vehicles, by misusing his official position. However, the competent authority, instead of adopting the procedure established by law, before imposing the penalty of dismissal, upon the petitioner, resorted to the short-cut method, by having recourse to the provisions of Article 311 (2) (b) of the Constitution of India. The view taken by respondent No.1, that it was reasonably impracticable to hold a regular departmental enquiry, can be construed as patently erroneous, and unjustified, and, thus, the dismissal of the petitioner, is liable to be set aside by quashing the order Annexure P-1.

9. It would, however, be appropriate to deal with the judicial precedents, relied upon by the counsel for the parties. In **Union of India Vs. Tulsi Ram Patel,** AIR 1985, SC 398, a Constitution Bench of the Apex Court considered the scope of three clauses of second proviso to Article 311 (2) and laid down various propositions including the following:-

> *"It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence, or of general indiscipline, and insubordination prevails, and it is immaterial whether the government servant concerned is or is not a party to bringing about such an atmosphere…. The reasonable practicability of holding an enquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on*

the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final… The finality given to the decision of the disciplinary authority by Article 311 (3) is not binding upon the Court so far as its power to Judicial review is concerned.

Where a government servant is dismissed , removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 of this Court under Article 32. the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not… In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry… In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them ---.

10. In **Chief Security Officer and others Vs. Singasan Raoi Das,** 1991(2) SLR 140, a three Judge Bench of the Supreme Court, considered the legality of an order of removal, passed against the respondent, under Article 311 (2) (b) on the ground, that he had abetted theft of Railway properties. The competent authority had invoked Rules 44,45 and 46 of the Railway Protection Force Rules, 1959, and dispensed with the regular enquiry, by recording the following observations:-

"Because of the facts that it is not considered feasible or desirable to procure the witnesses of the security/other Railway Employees since this will expose them and make

> *them ineffective for future. These witnesses if asked to appear at a confronted enquiry are likely to suffer personal humiliation and insults thereafter or even they and their family members may become targets of acts of violence."*

The High Court relied on the decision of the Supreme Court in T.R.Chellappah Vs. Union of India and others 1976(3) SCC 190 and quashed the order of punishment by observing that the writ petitioner had not been given an opportunity to represent against the proposed penalty. When the appeal was preferred in the Apex Court, on behalf of the appellant, reliance was placed on the judgment of the Constitution Bench in Tulsiram Patel's case (supra) and it was urged that the order of the High Court was liable to be set aside. Their Lordships of the Supreme Court rejected the appellant's plea and observed as under:-

> *"In our view it is not necessary to go into the submissions made by Dr. Anand Prakash because we find that in this case the reason given for dispensing with the enquiry is totally irrelevant and totally insufficient in law. It is common ground that under rules 44 to 46 of the said Rules the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on charges supplied to the employees concerned. In the present case, the only reason given for dispensing with the enquiry was that it was considered not feasible or desirable to procure witnesses of the security/other Railway employees since this further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view, these reasons are totally insufficient in law. We fail to understand how*

if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry. In this view, it is not necessary for us to consider whether any fresh opportunity was required to be given before imposing an order of punishment. In the result, the appeal fails and is dismissed. There will be no order as to costs."

11. In **Chandigarh Administration, U.T., Chandigarh and others Vs. Ajay Manchanda,** JT 1996(4) SC 113, a two judge Bench of the Apex Court interpreted Article 311 (2) and upheld the order of dismissal, passed by the competent Authority, in the case of respondent-Ajay Manchanda, which is extracted as under:-

"Makhan Singh alias Swaran Singh made a complaint which was marked to Shri S.C. Sagar DSP/Central, who submitted detailed report dated 11.3.94 whereby he found truth in the allegations of Makhan Singh alias Swaran Singh against S.I. Ajay Manchanda. S.I. Ajay Manchanda has extorted Rs.50,000/- and was further demanding Rs.50,000/- more from the accused. He threatened the accused to such an extent that the accused and the witnesses refused to make any statement before DSP S.C.Sagar.

Shri S.C. Sagar, DSP has reported that the witnesses are so terrorized by the threats of S.I. Ajay Manchanda that they have expressed their inability to

pursue the matter in the court of law or in any other enquiry against him and more so they refused to make any statement before him.

Whereas after going through the report of DSP statement before him.

Whereas after going through the report of DSP S.C.Sagar, the complaint of Makhan Singh alias Swaran Singh and my oral examination of Makhan Singh alias Swaran Singh, it has been proved to my subjective satisfaction that SI Ajay Manchanda has extorted Rs.50,000/- from accused Makhan Singh alias Swaran Singh and he was further demanding Rs.50,000/- more and he threatened him with dire consequences and the witnesses are so terrorized that they expressed their inability to pursue the matter.

The Judicial prosecution is not ordered in the case. The regular departmental enquiry is also not reasonably practicable in view of threats and witnesses inability to come forward to depose against the delinquent official due to threats of elimination. Therefore, I dispense with regular departmental enquiry in exercise of power vested in me under Article 311 (2) (b) of the Constitution of India."

12. The Central Administrative Tribunal, Chandigarh Bench had quashed the order of dismissal, by observing that the opinion formed by the punishing authority, on the impracticability of enquiry, was totally unwarranted. Their Lordships of the Supreme Court reversed the order of the Tribunal, and held that the material available, before the punishing authority, was sufficient to form an opinion, that it was not reasonably practicable to hold an enquiry against the respondent.

13. In **Ex. Constable Chhote Lal Vs. Union of India and**

others (2000) 10 SCC 196, the Apex Court reversed the order of this Court and held that the order of punishment could not be passed, by presuming that being a Police Constable, the appellant was in a position to influence the witnesses.

14. A careful perusal of the principle of law, laid down, in the aforesaid authorities referred to hereinbefore, reveals that the Apex Court upheld the order of dismissal, where it found that some material was available before the competent authority, in the form of preliminary enquiry report, information etc. which could be made the basis for forming an opinion, that it was reasonably impracticable to hold a regular enquiry. But, where no such material was available, the exercise of power under Clause (b) of Second proviso to Article 311 (2), was held to be arbitrary. In view of the above, there can be no escape from holding that respondent No.3 committed serious illegality, by invoking Clause (b) of second proviso to Article 311 (2)of the Constitution.

15. The orders dated 28.6.1991, Ex. P-2, passed by the Appellate Authority, and 4.12.1991, Ex. P-3, passed by the revisional authority, did not contain the reasons, which weighed with them, to come to the conclusion, that it was reasonably impracticable, to hold an enquiry against the petitioner. A number of points, were raised by Labh Singh in his appeal (Annexure P-5), but the same were not dealt with, in the said order. A perusal of both the orders, clearly goes to show, that the Appellate and the Revisional Authorities, were of the view that the Superintendent of Police, Ludhiana, was better equipped with the information, and, as such, had taken proper action. What was the basis of that information, on the strength whereof the Senior Superintendent of Police, had come to the

conclusion that it was reasonably impracticable, to hold an enquiry, did not stand divulged in these orders. In case, such information was given by a Police official or a private person, his name could be recorded, in Ex. P-1. In case, such an information was in writing, given by a Police Officer, or the tempo/truck operators, their names could be recorded, in the order itself, or could be shown to the Court so as to satisfy its conscience as to whether, it was reasonably impracticable to hold a departmental enquiry against Labh Singh, before dismissing him, from service. The orders Annexure P-2 and P-3, are illegal being non-speaking, and are also liable to be quashed.

16. For the reasons, recorded hereinbefore, the writ petition is accepted, with no order as to costs, and the order of dismissal dated 3.4.1990 (Annexure P-1) passed by the disciplinary authority, in exercise of the powers under Article 311 (2) (b) of the Constitution of India, the order dated 28.6.1991 passed by the Appellate Authority, and the order dated 4.12.1991 (Annexure P-3), passed by the Revisional Authority, are quashed. Since Labh Singh, Ex-Constable has already died, the respondents are directed to compute the consequential monetary benefits, flowing from the quashing of the aforesaid orders, as per the relevant Rules, within four months, from the date of receipt of a certified copy of the judgment, and release the same, in favour of Surinder Kaur, petitioner, his widow, within two months thereafter.

(SHAM SUNDER)
JUDGE

December 5 , 2007
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